Supreme Court, U.S.
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RECORD # _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1994

JAMES N. FLEMING,

Petitioner,

v.

UNITED STATES OF AMERICA, ET AL.

Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI

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THE QUESTIONS PRESENTED FOR REVIEW

I

WAS IT ERROR FOR THE COURTS BELOW TO DENY JAMES N. FLEMING HIS DECLARATORY JUDGMENT, REQUESTED RELIEF, AND TO ENTER A SUMMARY AFFIRMANCE AGAINST THE UNDERLYING CASE BASED ON THE ROOKER-FELDMAN DOCTRINE, WHICH DOCTRINE HE ASSERTS CREATES AN ACTUAL CONTROVERSY UNDER THE CONSTITUTION AND LAWS OF CONGRESS THAT ONLY THIS COURT CAN RESOLVE TO RESTORE HIS FEDERALLY PROTECTED FUNDAMENTAL RIGHTS?

II

ARE NOT THE UNITED STATES CONSTITUTION'S THIRTEENTH AND FOURTEENTH AMENDMENTS, AND LAWS PASSED PURSUANT TO THEIR ENABLING CLAUSES BY CONGRESS, WHICH GIVE GRANTS OF ORIGINAL JURISDICTION TO THE UNITED STATES DISTRICT COURTS OF THIS NATION TO

ENFORCE THOSE AMENDMENTS, E.G., 28 USC 1343 (A), AS THE INFERIOR COURTS SO AUTHORIZED BY THE LEGISLATIVE BRANCH, UNDER ARTICLE III SECTIONS 1 AND 2, AND THOSE ENACTED LAWS PER ARTICLE VI OF THE CONSTITUTION, THE SUPREME LAW OF THE LAND AS OPPOSED TO THE ROOKER-FELDMAN DOCTRINE?

III

AND THEREFORE, ARE THOSE GRANTS OF JURISDICTION NOT SUPERIOR IN JURISDICTION TO THE JUDICIAL PROCEDURAL JURISDICTIONAL DOCTRINE KNOWN AS THE "ROOKER-FELDMAN DOCTRINE," VIZ., DISTRICT OF COLUMBIA COURT OF APPEALS V. FELDMAN, 460 U.S. 462, 482 (1983); ROOKER V. FIDELITY TRUST CO., 263 U.S. 413, 415, 416 (1923), WHICH JUDICIAL DOCTRINE WAS DECLARED BY THE DISTRICT COURT, AND AFFIRMED BY THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT BELOW, TO BE THE SUPREME LAW OF THE LAND; THEREBY, BARRING IN

THIS DECLARATORY ACTION BELOW ALL FEDERAL PROTECTIONS AND REMEDIES OF YOUR PETITIONER JAMES N. FLEMING TO VINDICATE BEFORE FEDERAL COURTS HIS THIRTEENTH AND FOURTEENTH AMENDMENT RIGHTS VIOLATIONS WHICH STEM FROM A FINAL STATE JUDGMENT THAT CONSTITUTES A STATE SANCTION TO IMPOSE UNLAWFUL BADGES AND INCIDENTS OF SLAVERY?

The Parties To the Proceedings In the Court Below

The petitioner is James N. Fleming. The Respondents are the United States of America and its judicial employees of the United States District Courts for the Western District of Virginia and the United States Court of Appeals for the Fourth Circuit.

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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

The petitioner, James N. Fleming, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the District of Columbia Circuit entered in this proceeding on July 27, 1994.

OPINIONS BELOW

The "unpublished", per curiam, opinion of the United States Court of Appeals for the District of Columbia Circuit is set out in the appendix at pages 3 through 5. The unpublished memorandum of the District Court is set out in the appendix at pages 7 through 18.

GROUNDS FOR JURISDICTION

The judgment sought to be reviewed is dated and was entered July 27, 1994 by the United States Court of Appeals for the District of Columbia. (App. 3-5)

Rehearing was denied by order filed September 14, 1994 (App. 1-2)

Title 28 United States Code, Section 1254(1) confers jurisdiction to review the judgment by writ of certiorari.

THE CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitution of the United States:

Amendment XIII

Section 1.

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United

States, or any place subject to their jurisdiction.

Section 2.

Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV

Section 1.

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person or life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5

[Power to Enforce This Article]

The Congress shall have power to enforce, by appropriate legislation, the

provisions of this article. (Proposed by Congress on June 13, 1866, and declared ratified on July 28, 1868.)

ARTICLE III.

Section 1.

[Judicial Power, Tenure of Office]

The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2.

[Jurisdiction]

The judicial power shall extend to all

cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In

all other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

ARTICLE VI

[Debts, Supremacy, Oath]

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executives and

judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Title 28 USC § 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by write of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is

specially set up or claimed under the Constitution or the treaties of statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

Title 28 USC § 2201. Creation of remedy

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under Section 7428 of the Internal Revenue Code of 1954 [26 USC § 7428], any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and

effect of a final judgment or decree and shall be reviewable as such.

Title 28 USC § 1331. Federal Question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

Title 28 USC § 1343. Civil Rights and Elective Franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in

section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States of by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

Title 42 USC § 1981. Equal Rights Under the Law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

Title 42 USC § 1983. Civil Action for Deprivation of Rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to

be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

This case is a novel case and unprecedented. It challenges under our Constitution and the laws of Congress a judicial doctrine created by this Court in a judicial construction of a 20th century congressional statute, viz., 28 U.S.C. 1257, enacted in 1923. A separation of powers issue looms and a constitutional law conflict exists due to the judicial doctrine known as the "Rooker-Feldman Doctrine." It directly conflicts with 28 U.S. 1343(a), the Thirteenth and Fourteenth Amendments of the United States Constitution, Article III, Sections One and Two, and Article VI of the Constitution.

James N. Fleming filed a federal complaint below to challenge directly the Rooker-Feldman doctrine as depriving him of his federally protected rights and by its

application, misapplication, or on its face being violative or repugnant to the Constitution.

He sought a declaratory judgment under 28 USC § 2201. The District Court below granted the United States government's motion to dismiss; the Court of Appeals for the District of Columbia Circuit affirmed and granted a summary affirmance denying briefs or argument before the Court.

The Rooker-Feldman doctrine evolves out of this Court's cases of Rooker v. Fidelity Trust Co. 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman. 460 U.S. 462 (1983). In summary, this doctrine says that no federal court may review a final state judgment. (App. 19-22. See Fourth Circuit opinion.) This judicial construction abridges and conflicts with Congress's grants of original jurisdiction such as 28 USC 1343

(a).

Mr. Fleming in the 1980's was harnessed with a final state Virginia libel verdict as "a member of the black race" who was critical of his white zoning opponent self described in the state libel action pleading as "a member of the white race." The state lawsuit was by its own pleading and on its face, a racial lawsuit. (App. 30-34, at 31.)

Rooker-Feldman as a procedural doctrine addressing subject matter jurisdiction was used to bar Mr. Fleming from vindication of his fundamental constitutional rights and Thirteenth Amendment prohibitions. The inferior federal Courts of Virginia did follow repeatedly this doctrine to allow a disenfranchisement of the United States citizenship of James N. Fleming by allowing a state court sanction to impose a badge of slavery on Mr. Fleming and to stand

uncontested in the federal inferior courts. A protected class of citizen whose fundamental rights by reason thereof were conferred upon him as a descendant of a slave, Mr. Fleming is absolutely guaranteed by the Thirteenth and Fourteenth Amendments that the federal inferior courts are duty bound, by grants of "original jurisdiction," to enforce his constitutional rights against state infringements, viz., 28 USC 1343 (a) et. seq. The constitutional issue of where "jurisdiction" lies is therefore critical.

The "Rooker-Feldman" doctrine by its application, misapplication, or on its face, has unlawfully taken precedence over the congressional grant of "original jurisdiction" in violation of, and repugnant to the Constitution, Article III, Sections 1 and 2, and Article VI.

No judicial doctrine can lawfully have

the authority to divest Mr. Fleming and his class of these sacred rights vested in the Constitution nor make nugatory remedies passed by Congress to enforce the same. National blood spilled by war and conflict gave birth to two of the most momentous Constitutional enactments since the Founding Fathers wrote the Constitution itself, the Thirteenth and Fourteenth Amendments.

Under the facts and circumstances of this compelling individual case, these Amendments must be declared supreme over the Rooker-Feldman doctrine as well as the laws passed by Congress under those Amendments' enabling clauses to gain enforcement. This Supreme Court should properly instruct and direct the inferior federal Courts to correct their omission and their error in following the Rooker-Feldman doctrine when they are mandated by Congressional grants of "original

jurisdiction" to enforce Constitutional law.

Article III, Section 2, compels the "Supreme" Court over the "inferior" Courts by appellate jurisdiction to declare that Rooker-Feldman has no constitutional superiority in this specific class of cases authorized and enacted by Congress and by the power of the Constitution itself. (Article VI.)

It is respect to this Court that we who similarly took an oath to uphold the Constitution are commanded to submit an "actual controversy" under the Constitution and the laws of Congress which clearly exists caused by this Court's reasoning in the Rooker-Feldman cases.

The actual controversy is whether the constitutional grants of original jurisdiction required the federal courts to give the petitioner Fleming protection of his

fundamental constitutional rights violated by the state actors, or should the federal courts adhere to the Rooker-Feldman doctrine to bar those guarantees and protections? Due not only to the facts and circumstances of this compelling individual case, the Supreme Court has a duty in the exercise of its jurisdiction under Article III to correct the misapplication of constitutional law made universally by the inferior courts which have relied on the doctrine of Rooker-Feldman as announced by this Court to wrongly deny Mr. Fleming his federal remedies and, thereby, failing to protect his federally protected constitutional rights. If Mr. Fleming by this case is not protected, then no minority American is protected from a final state judgment which by its very sanction violates the Thirteenth or Fourteenth Amendments.

Fundamental Constitutional rights and

their protections are at hand, for Mr. Fleming and his class, before the "Supreme" Court, as opposed to lower holdings of "inferior" courts, viz., reference Article III, Sections 1 and 2. The federal inferior Courts have consistently held that the Rooker-Feldman doctrine bars all of Mr. Fleming's federal remedies to vindicate his Constitutional and fundamental rights after a final state judgment violated his Thirteenth and Fourteenth Amendment rights. Mr. Fleming argued below that he has become the Dred Scott of the 20th century.

The Rooker-Feldman doctrine displaces constitutional law as found in Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968) which clarified the breadth and power of the Thirteenth and Fourteenth Amendments to this nation. The Thirteenth Amendment to be enforced, of course, does not require state

action. Id.

The Rooker-Feldman doctrine was nevertheless used to even defeat Mr. Fleming's Thirteenth Amendment federal action as well, when no state court ever weighed that ominous constitutional issue which one United States Circuit Judge in denying injunctive relief to stay the execution of the state judgment against Fleming held: "It is claimed this is a badge of slavery, which of course, it is." (App. 24.) Simply stated, Mr. Fleming has no constitutional rights due to the universal application of the Rooker-Feldman doctrine by federal inferior courts and he has wrongly been deprived of the very forum the Constitution and Congress envisioned for him to go to in order to vindicate those very rights.

Factually, Mr. Fleming expressed his critical opinion against his white zoning

adversary in the 1970's on a matter of public concern involving complicated local zoning laws in Albemarle County, Virginia. For his opinion titled "RACISM" (App. 26-29), the private white individual, whose name is mentioned in Mr. Fleming's published article, as not wanting to see any black person within his sight, Professor Moore, openly declared himself to the world in the state pleading for his action of libel against Mr. Fleming, that he, as "a member of the white race," had been "insulted, mortified, held up to ridicule, humiliated, and aggrieved" by Mr. Fleming, who Professor Moore noted in the state pleading was "a member of the black race." (App. 30-34, at 31.)

The state case was brought as a racial lawsuit to punish Mr. Fleming for his critical words as was once inflicted under the Virginia slave code to negroes who were

deemed to be punishable for critizing whites through their menacing language or gestures. Fleming exercised his free speech on a public matter, being Mr. Fleming's housing development, which stood to make Mr. Fleming quite wealthy in a white neighborhood.

Professor Moore opposed, with a predominantly white power structure, Mr. Fleming's housing project which professed to be open to all persons of every race or financial makeup. Professor Moore fought Mr. Fleming's housing development even after it had been forcibly approved by a Consent Order of a United States District Court, United States District Court for the Western District of Virginia, Civil Action #75-11, Fleming v. County of Albemarle.

Mr. Fleming had alleged and proved racial discrimination in the governmental disapproval of his housing development which

disapproval was supported by a power bloc of white opponents, including Professor Moore, whose house next to the development was a miniature replica of Thomas Jefferson's home, Monticello. Moore insisted on a 100 ft. tree buffer which the local government adopted thereby preparing to confiscate acres of Mr. Fleming's land so Moore would not have to see the development. This gave rise to Mr. Fleming's opinion that Moore, unlike Jefferson, did not want to see any black people within his sight, viz., the article "RACISM" discussing the fight between the "haves" and the "have nots." (App. 27.)

Mr. Fleming took up pen and exercised the same right white citizens had exercised since the earliest days of Virginia as a state constitutional privilege, to write or speak "any pure expression of opinion not amounting to fighting words however ill

founded without inhibition by actions for libel and slander." Chaves v. Johnson, 230 Va. 112, 119, 335 S.E. 2d 97, 101-102 (1985).

It was this very case opinion, reciting Thomas Jefferson's first Inaugural Address of 1801, that Mr. Fleming used at the last procedural stage of his state proceeding to reverse Moore's libel judgment based on the article "RACISM." Fleming sought to have his case conformed to the Chaves decision. It involved two white architects one publicly criticizing the other. The Virginia Supreme Court refused Mr. Fleming his request. His First Amendment rights were thus denied.

This gave reason for Mr. Fleming to raise his Fourteenth and Thirteenth Amendment federal claims for the first time in federal court notwithstanding the state motion for judgment on its face and the final state

judgment were, in and of themselves, violative of those Amendments and his First Amendment rights.

After the state judgments were final, Fleming v. Moore, sub. nom, The Gazette v. Harris, 229 Va. 1, 43, 325 S.E. 2d 713, Fleming II (1985); See also Fleming v. Moore 221 Va. 884, 275 S.E. 2d 632 at 635 (1981), Fleming I, Mr. Fleming launched his federal collateral attack that this state sanction by judicial judgment violated his Thirteenth and Fourteenth Amendment rights. The case was summarily dismissed by the Virginia federal courts citing the Rooker-Feldman doctrine. The Fourth Circuit concurred. A writ for certiorari was denied by this Court.

The final state judgment has continuing and prospective unconstitutional effect, silencing Mr. Fleming and taking his free expression from him and imposing badges and

incidents of slavery upon him. Mr. Moore, with the assistance of the state, severely punished Mr. Fleming for his menacing gesture as a "Negro" with the assistance of state action and state judicial sanction. The judiciary thereby adopted incidents, relics, and badges of slavery by harnessing Mr. Fleming with one of the largest state civil libel judgments ever awarded in Virginia's judicial history, exceeding a quarter-million dollars because Fleming, "a member of the black race," had insulted Moore, "a member of the white race." Fleming argues if any black citizen reads of public record Fleming v. Moore 221 Va. 884 (1981), his opinion "RACISM" is published there as a warning to all black Virginia citizens, that this is the price to be paid for openly criticizing a white person on issues of public concern.

The result is reminiscent of the Old

Slave Code of Virginia that no Negro could make a menacing gesture to a white person. (Virginia General Assembly 1847-48 Enactment, "Offenses by Negroes," § 14 (11) (12).) The menacing Negro would be taken to the public square after being tried by a magistrate or Judge and administered not more than 39 stripes at any one time as punishment.

At Mr. Fleming's state trials in the 1970's and 1980's, all black jurors were first peremptorily struck by Mr. Moore's counsel. This was objected to as unconstitutional at that time and which practice is now held by recent decisions of this Court to be unconstitutional. (Batson v. Kentucky 476 U.S. 79 (1986); Edmonson v. Leesville Concrete Co. 500 U.S. 614, 111 S. Ct. 2077 (1991).) Mr. Fleming was harnessed with one of the largest libel verdicts in the history of Virginia handed down by an all-

white jury. He thus got his 39 stripes and then some.

Mr. Fleming, ahead of his time, argued the jury issue in one of his applications for writ of certiorari to this Court, record # 85-1532, wherein the NAACP also filed an amicus brief arguing that Moore's striking of all black jurors violated Mr. Fleming's constitutional right to equal protection of the laws. His argument was made to no avail. The writ was denied by this Court which in 1991 changed its mind.

Finally, at the conclusion of the state action and the repeated failed attempts to seek federal jurisdiction denied by reason of the Rooker-Feldman doctrine, Fleming directly attacked the Rooker-Feldman doctrine itself. He named the United States of America and its judicial employees in the Western United States District Courts of Virginia and the

United States Court of Appeals for the Fourth Circuit as party defendants, seeking both declaratory and injunctive relief and damages for reimbursement of his expenses and costs, restoration of his rights, and attorney fees for those judicial employees' willful and wrongful application of the Rooker-Feldman doctrine to bar what Congress had otherwise authorized, civil actions by citizens to vindicate their constitutional rights from state action infringements.

Each of the inferior federal courts here listed saw Fleming's federal cases dismissed by reason of the Rooker-Feldman doctrine. (Fleming v. Moore, et al., Slip Opinion No. 87-6619 (4th Cir. 1989); Fleming v. Moore, 780 F.2d 438 (4th Cir. 1985); Fleming v. Moore, No. 85-2168, cert. den., 55 U.S.L.W. 3258 (1986); Fleming v. Moore, No. 85-1532, cert. den. 54 U.S.L.W. 1697 (1986);

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rights being the "inferior" Courts of the United States and their federal employees sitting in Virginia.

In the alternative, Fleming being vested with his citizenship through the Fourteenth and Thirteenth Amendments, because of the disenfranchisement he has suffered due to the Rooker-Feldman doctrine, seeks a declaratory judgment also to declare it to be in conflict with the Thirteenth and Fourteenth Amendments and the laws of Congress passed under those amendments to the extent that the Rooker-Feldman doctrine as to those amendments and 28 USC 1343 (a) is repugnant to the Constitution itself, and, therefore it is unconstitutional on its face as it would be applied by the inferior Courts to Thirteenth and Fourteenth Amendment claims of Mr. Fleming and his protected class.

Therefore, Rooker-Feldman is

unconstitutional in its application and on its face, and it presents an actual controversy under the Constitution to be resolved by the appellate jurisdiction of this Court in favor of Mr. Fleming, thereby vindicating Mr. Fleming's Thirteenth and Fourteenth Amendment federally protected rights and of his class.

He urges for himself and for his class that recurrences of this disenfranchisement will continually occur in this nation without the highest federal tribunal, the Supreme Court of the United States, deciding by its supreme jurisdiction this actual controversy and correcting this constitutional conflict created by the inferior federal courts which relied on the Rooker-Feldman doctrine to bar these cases.

In vindicating this impermissible unconstitutional infringement on Mr.

Fleming's rights and freedom, the Supreme Court of the United States is requested to remand this case to the District Court for further proceedings consistent with this Court's ruling and instructions that the lower district courts below did indeed have "original jurisdiction" to hear and resolve Mr. Fleming's federal complaint. Mr. Fleming filed a motion for summary judgment. He also asks that this Court vacate the lower district court's order granting the government's motion to dismiss and enter Mr. Fleming's summary judgment motion asserting as a matter of constitutional law, that the Thirteenth and Fourteenth Amendments and the laws of Congress enacted to enforce them are the supreme law of the land and are superior to the Rooker-Feldman doctrine.

Basis for Jurisdiction of Federal District Court

Jurisdiction of the district court was invoked under 28 U.S.C. 2201 and, further, under 28 U.S.C. 1331 and 1343(a), this being an action for legal and equitable redress arising as well under 42 U.S.C. 1981 and 1983.

On motions of the defendants, the district court summarily dismissed the action "for lack of subject matter jurisdiction," citing as authority District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). (App. 7-18.) The Court of Appeals for the District of Columbia Circuit affirmed, citing the Rooker-Feldman doctrine (Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) and District of Columbia Court of Appeals v. Feldman, supra.) and 28 U.S.C. §1257. (App. 3-5.)

REASONS FOR ALLOWANCE OF THE WRIT

I

Summary of the Argument

There exists little or no case law on this case before you. Article III, Section 1 and 2 are the beginning point of Constitutional law to address Mr. Fleming's case.

This nation enacted the Thirteenth and Fourteenth Amendments with enabling clauses to ensure their enforcement. Congress, recognizing that access to federal courts might well be required to vindicate federal Constitutional rights, enacted statutes granting "original jurisdiction" to federal courts to enforce these Amendments in our district courts. Adherence to "Rooker-Feldman" by the lower courts, however, presently prevents federal courts from utilizing their Congressionally granted

jurisdiction.

A clear constitutional conflict thus exists between these Amendments, the laws passed to enforce them, and the "Rooker-Feldman" doctrine. In such a conflict, the Constitution, and constitutionally valid Congressional legislation, must prevail. "Rooker-Feldman" deprives individuals of a protected class of the ability legally to obtain vindication of their constitutionally protected Thirteenth and Fourteenth Amendment rights because it denies them access to federal district courts, the appropriate fora in which to assert those rights, rendering nugatory the protection of the Thirteenth and Fourteenth Amendments in states unwilling to honor their legal force.

As a descendant of an African-American slave, that class of Americans acknowledged as citizens by virtue of the passage of the

Thirteenth and Fourteenth Amendments, Mr. Fleming's fundamental rights as an American citizen are guaranteed by our Constitution. We submit that Mr. Fleming and others of his class have been denied the protection guaranteed by the Thirteenth and Fourteenth Amendments, and that as to Fleming this denial of Constitutional protection has been worked by private actors, and by the state judiciary of Virginia, under the sanction of state law, as asserted in his Complaint. Mr. Fleming's attempts to vindicate his federally guaranteed rights, once he had been subjected to state deprivation of those federally protected rights, was thwarted by his inability to press his federal claims in federal courts.

If the "Rooker-Feldman" doctrine is a "universal" doctrine, barring citizens of any race from attacking a final state judgment,

as recited by Fleming's former adversaries, even when that judgment is violative of First, Thirteenth or Fourteenth Amendment rights, then this case must be heard to resolve the constitutional conflict Fleming raises for himself, his class and all minority races. If the Virginia or any similar state's judicial decision is allowed to stand, as it has against Fleming, depriving a citizen of the United States fundamental rights due to the fiction of the "Rooker-Feldman" doctrine, then all Thirteenth and Fourteenth Amendment protection and guarantees, and the remedies provided by laws of Congress, as to any member of a minority race, may be ignored among the states without fear of federal intervention.

The District Court below expressed the fear that to take this unprecedented position

would result in "No state court decision would ever be considered final," and, "It would place the judicial system in a perpetual-motion cycle". (App. 17.)

Thus the District Court, in that fear, below joined every federal court which has to date reviewed Mr. Fleming's various federal collateral and direct attacks and concluded identically to cast that fear aside, "Until the Supreme Court of the United States says otherwise, the Rooker-Feldman doctrines remains the law of the land." (App. 16-17.) Rooker-Feldman is not the supreme law of the land by reason of Article VI.

Mr. Fleming does not even suggest as the District Court below does that every state final judgment should come into play if the Rooker-Feldman doctrine were struck down, rather, he submits only those final state judgments come into federal court which would

by state judicial sanction impose a badge or incident of slavery violative of the Thirteenth and Fourteenth Amendments of our citizenry or prove to be violative of federally protected rights.

In this regard, Congress has made a protected class of citizens to achieve racial equality so that a state actor and state jurist in the Mississippi Delta or the boroughs of Chicago or the streets of Los Angeles will adhere to the law of the land, the Thirteenth and Fourteenth Amendments, and the laws of Congress passed to enforce them. Otherwise, if they failed to do so, the federal tribunals which have original jurisdiction to see that the constitutional rights of this class are enforced, violate their oath and affirmation "...to support this Constitution." (Article VI.)

The Rooker-Feldman doctrine is

therefore at total odds and conflict with the law of this nation and the Constitution itself. The Supreme Court of the United States must correct this misapprehension of the law by taking this case and announcing to all inferior federal courts across this nation that the misapplication of Rooker-Feldman is constitutional error in this type of case and so declare the Thirteenth and Fourteenth Amendments and 28 USC 1343 (a) superior to that doctrine, and in the alternative, that the doctrine is repugnant to those Amendments and the laws of Congress passed to enforce them, and therefore unconstitutional when used in that limited context or unconstitutional in its misapplication to those classes of case.

II

The Constitutional Issue Is Also Strictly One of Jurisdiction

Pursuant to the Thirteenth and Fourteenth Amendments and their enabling clauses, and Article III, Section 1 of the United States Constitution, the United States District Courts receive grants of "original jurisdiction" from Congress to enforce Fleming's constitutional rights from unlawful sanctions coming out of state law, judiciary sanctions, police, and even state sovereignty and its agents' unconstitutional customs, practices, and policy. Only one avenue existed for Mr. Fleming to expunge the badge of slavery imposed and to right the disenfranchisement of his citizenship, and, that is in the federal courts as this case so well proves. 28 USC 1343 (a) provided this avenue by a granting of "original

jurisdiction." The judicial doctrine of Rooker-Feldman made that grant of jurisdiction nugatory in violation of the Constitution itself.

Mr. Fleming argues that the flawed reasoning of inferior federal courts sitting in Virginia to give Rooker-Feldman this supremacy over the Constitution itself is no less than a misapplication of Constitutional law, and defeats the Supremacy Clause of Article VI and violates the separation of powers by defying Congress's Constitutional role.

To follow as the District Court below did that by reason that Rooker-Feldman is the law of the land to this sort of case, when it is not the law of the land, simply and impermissibly allows the inferior courts of the United States to unlawfully ignore Congressional grants of original jurisdiction

by refusing to review a final state judgment under these facts and circumstances, which violates federally protected rights. Federal courts thereby unwittingly join state action to unlawfully defeat Mr. Fleming's federally protected rights under the Thirteenth and Fourteenth Amendments, which are clearly superior and supreme to the Rooker-Feldman doctrine, and to make nugatory the grant of jurisdiction to enforce those rights.

Using the Rooker-Feldman reasoning, Mr. Fleming submits, could raise the unconstitutional specter of private actors across this nation, instituting state court sanctions secured by final state judgments violative of these constitutional Amendments, and obtaining thereby in any of the fifty states the identical result imposed on Mr. Fleming, a badge, relic, or incident of slavery.

The end result is that the protected class of citizenry would under the Rooker-Feldman doctrine be without immediate redress in the inferior federal courts because of the Rooker-Feldman doctrine procedural bar. This is a blatant, willful and unconstitutional indifference to the Constitution if this judicial doctrine can continue to be a bar which makes a Congressional grant of original jurisdiction entirely meaningless.

III

Jurisdiction is Supreme

The Constitution at Article VI states "this Constitution, and the Laws of the United States which shall be made in Pursuance thereof...shall be the supreme Law of the Land." In Bell v. Maryland, 378 U.S. 221 (1964), this Court reviewed Marbury v. Madison, 1 Cranch 137, 177-178 (1803), noting

that where there are conflicting laws with the Constitution, Chief Justice Marshall and the Court held "...the Court must determine which of these conflicting rules govern the case. This is the very essence of judicial duty." The District Court below and the Circuit Court of Appeals below are both wrong that the Rooker-Feldman doctrine is "the law of the land." The Thirteenth and Fourteenth Amendments and Congressional grants of original jurisdiction to enforce those Amendments is the supreme law of the land.

Chief Justice Marshall concludes, Id., at 180: "Thus the particular phraseology of the Constitution of the United States confirms and strengthens the principle supposed to be essential to all written Constitutions, that a law repugnant to the Constitution is <u>void</u>; and that <u>courts</u>, as well as other departments, are bound by that

instrument." The Thirteenth and Fourteenth Amendments are part and parcel of our nation's Constitution. 28 USC 1257 spawning the Rooker-Feldman doctrine is not. No judicial doctrine can supplant these Amendments nor supplant the grant of the legislative branch so empowered to give the district courts original jurisdiction to enforce those very Amendments. The Rooker-Feldman doctrine has impermissibly done just that and as applied and on its face and, when put in conflict with the Constitution, it is repugnant and therefore void as to its misapplication to Mr. Fleming and his class's federally protected rights and the laws passed to enforce those rights.

The creation of lower federal courts and determination of their jurisdiction has been left to Congress, Article III § 1. It is for Congress to decide to what extent the

"judicial power" of the United States is to be exercised by the lower federal courts and thus the "judicial power" specified in the Constitution, Article III, section 2, clause 1, absent a Congressional grant to the lower federal courts, may be exercised by the Supreme Court in the first instance. Ames v. Kansas, 111 U.S. 449, 4 S. Ct. 437 (1884). We thus have a separation of powers conflict that should be resolved by declaratory judgment that between the Rooker-Feldman doctrine created by the judiciary and original jurisdiction grants found in 28 USC 1343 (a) and 1331 passed by the power reserved in the Constitution to Congress, the latter prevails.

Clearly, the Congress has the power to grant the "judicial power" to the lower Courts by grants of original jurisdiction and the Supreme Court shall sit in appellate

jurisdiction to make certain there is uniformity of judgments as those judgments so apply to the Constitution. In this case, the lower courts are in constitutional error to depend on the Rooker-Feldman doctrine to deny James N. Fleming his lawful access to the district courts empowered to vindicate his fundamental and individual constitutional rights.

By enabling clauses of the Thirteenth and Fourteenth Amendments, Congress passed 28 USC 1343 (a) giving a grant of original jurisdiction to the lower inferior courts to enforce those Amendments viz., "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person." 28 USC 1343 sets out those civil cases which include cases to redress the deprivation under color of any State law, statute, ordinance, regulation,

custom or usage, of any right, privilege or immunity secured by the Constitution of the United States of by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States." Mr. Fleming has, therefore, a civil case and he seeks legal and equitable remedies provided by Congress under 28 USC 1343 (a). This grant of jurisdiction and the laws passed are the supreme law of the land under Article VI.

28 USC 1331 states further that "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Mr. Fleming thus has access to the district court to seek damages as well. He can also proceed under 28 USC 2201 for a declaration of those rights.

In Jones v. Mayer 392 U.S. 409 (1968),

this Court at 439-440 defined the breadth and power of the Thirteenth Amendment, "...the authors of the Thirteenth Amendment had no doubt that its Enabling Clause contemplated the sort of positive legislation that was embodied in the 1866 Civil Rights Act. Citing the Civil War Cases, 109 U.S. 3 at 23 (1883), the Court wrote "Under the Thirteenth Amendment, it has to do only with slavery and its incidents. Under the Fourteenth Amendment, it has the power to counteract and render nugatory all State Laws and proceedings which have the effect to abridge any of the privileges or immunities of citizens of the United States... ."

The Court went on to hold that under the Thirteenth Amendment legislation, it had the power to "eradicate all forms and incidents of slavery...direct and primary, operating upon the acts of individuals..." Id. One

Fourth Circuit Judge held the final state judgment against Mr. Fleming was a badge of slavery and retreated from striking it down writing in his denial of injunctive relief his adherence to Rooker-Feldman (App. 23-25), "It is claimed that this is a badge of slavery, which, of course, it is." (Emphasis added.) Yet no federal lower court would ever allow Mr. Fleming a trial to strike that badge down as unconstitutional under the United States Constitution.

28 USC 1257 (reference page 7 herein) applies to "final judgments," viz., "...where the validity of a treaty or statute of the United States is drawn into question or where the validity of a statute of any state is drawn into question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States... ." As the basis of Rooker-Feldman, its

application is entirely and wrongly misplaced by the lower federal courts. Mr. Fleming's final state judgment in no manner drew into question the validity of a state or federal statute.

James N. Fleming's case is in many ways a clarion call to the disadvantaged of this country, many of whom are members of racial minorities, whom he aptly called the "have nots" in his published article titled "RACISM." For any American not of the predominant race, James N. Fleming is a chilling example of the way in which a majority can suppress and punish expression which challenges racially inequitable treatment. It was done to Fleming by his own community with an all-white jury after black jurors were struck first by preemptory strike, and secured by the sanction of a state judiciary.

Racially based different and unequal treatment is the very constitutional affront outlawed by the Thirteenth and Fourteenth Amendments. The Supreme Court of the United States has recognized this basic tenet in Bell v. Maryland and Jones v. Mayer, previously cited. Yet these decisions were not applied by Virginia's federal judiciary because, as stated in the United States Fourth Circuit opinion, Fleming's Thirteenth and Fourteenth Amendment constitutional challenges "fly" in the "face" of the "Rooker-Feldman" doctrine. The District Court below declared Rooker-Feldman "the law of the land" until the Supreme Court of the United States says otherwise. (App. 16-17.)

Thus, this is the historical moment of this "Supreme" Court to say otherwise. During the Civil Rights movement in the 1960's, thousands upon thousands of

Americans, whites and minorities, risked life, limb, and liberty to announce that they as Americans would no longer tolerate minority racial oppression of fellow Americans. From those freedom fighters and freedom riders we have inherited changed attitudes and laws which have permanently altered in definite ways the national racial justice of this multi-faceted, multi-lingual, and multi-ethnic nation. The Rooker-Feldman doctrine as used in this case of Mr. Fleming's makes a mockery of our constitutional system, and its inherent constitutionally flawed thinking must be corrected to properly direct the inferior Courts lest we be lost to yet another judicial era similar to the separate but equal doctrine. The epoch of this Supreme Court is to resoundingly say, "Not again." The Constitution is your charge and we submit

under it, it is your duty to correct the unconstitutional result of the James N. Fleming case.

Conclusion

If we are to succeed in moving forward as a free nation whose citizens live in harmony, then a situation such as Mr. Fleming's should never again occur. No American similarly situated should be barred procedurally, as was Mr. Fleming by the lower federal courts, from seeking vindication of his federally protected rights before an authorized federal tribunal because of the Rooker-Feldman doctrine.

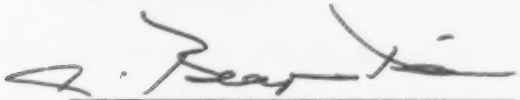
To ensure that it never recurs, the "Rooker-Feldman" doctrine must be declared unconstitutional in its application, misapplication or on its face as applied to those cases such as Mr. Fleming's. Eternal

vigilance is the price of liberty. This Court can guarantee the liberty of all by its application of vigilance to correct this unconstitutional result.

Accordingly, we ask for the Petitioner that a writ of certiorari to the Judgment of the United States Court of Appeals for the District of Columbia Circuit will be granted for this just cause in the name of the Constitution of the United States and for all similarly situated American people.

Respectfully submitted,

James N. Fleming
Petitioner
By Counsel



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APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94-5079 September Term, 1994
USDC CV 93-2002

James N. Fleming, Filed: 9/14/94

Appellant,

v.

United States of America, and in declaratory relief for Constitutional Protection and Guarantees Under the Thirteenth and Fourteenth Amendments, inter alia, all Judicial Employees for the United States Western District Court of Virginia; and of the United States Court of Appeals for the Fourth Circuit, Necessary Parties,

Appellee

BEFORE: Mikva, Chief Judge; Wald, Edwards, Silberman, Buckley, Williams, Ginsburg, Sentelle, Henderson, Randolph and Rogers, Circuit Judges

O R D E R

Appellant's Suggestion for Rehearing In Banc has been circulated to the full Court. No member of the Court requested the taking of a vote thereon. Upon consideration of the

foregoing it is

ORDERED, by the Court *in banc*, that the suggestion is denied.

Per Curiam
FOR THE COURT:
RON GARVIN, CLERK

BY:

Robert A. Bonner
Deputy Clerk

Chief Judge Mikva did not participate in this matter.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94-5079 September Term, 1994
USDC CV 93-2002

James N. Fleming, Filed: 07/27/94

Appellant,

v.

United States of America, et al.

BEFORE: Mikva, Chief Judge; Silberman and Ginsburg, Circuit Judges

O R D E R

Upon consideration of the motion for summary affirmance, the response thereto, and the reply, it is

ORDERED that the motion for summary affirmance be granted. The district court correctly concluded that it lacked jurisdiction over appellant's attempt to obtain collateral federal review of the state-court judgment against him, regardless of the constitutional nature of his

objections to that judgment. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486 (1983) (district courts "do not have jurisdiction . . . over challenges to state-court decisions in particular cases arising out of judicial proceedings even it those challenges allege that the state court's action was unconstitutional"). The district court also correctly concluded that it lacked jurisdiction to review decisions of the United States Court of Appeals for the Fourth Circuit. See 28 U.S.C. § 1254 (providing for Supreme Court review, by way of writ of certiorari, of decisions of circuit courts of appeals). Finally, appellant's claim for compensatory damages is clearly barred by sovereign immunity, see Clark v. Library of Congress, 750 F.2d 89, 102-04 & n.31 (D.C. Cir. 1984) (no waiver of sovereign immunity for damages claims against

United States or federal officials in their official capacities), and judicial immunity. See Sindram v. Suda, 986 F.2d 1459, 1460-61 (D.C. Cir. 1993) (per curiam) (judges and judicial officers absolutely immune from liability for acts taken in judicial capacity). The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam); Walker v. Washington, 627 F.2d 541, 545 (D.C. Cir.) (per curiam), cert. denied, 449 U.S. 994 (1980).

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 41.

Per Curiam

UNITED STATES COURT

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Civil Action No. 93-2002

(Stanley Sporkin)

James N. Fleming,

Plaintiff,

v.

United States of America, et al.

Defendants

ORDER

This matter comes before the Court on Defendant's motion to dismiss. Having considered the motion, Plaintiff's opposition thereto, having heard argument by the parties, and for the reasons stated in the foregoing memorandum opinion, it is hereby

ORDERED that this matter be dismissed.

Date: March 25, 1994

Stanley Sporkin
United States District Court

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Civil Action No. 93-2002

(Stanley Sporkin)

James N. Fleming,

Plaintiff,

v.

United States of America, et al.

Defendants

MEMORANDUM OPINION AND ORDER

Plaintiff James N. Fleming is a citizen of Virginia. In this class action complaint, he seeks declaratory, injunctive, and monetary relief from the Unites States arising from the alleged violation of his constitutional rights by the United States District Court for the Western District of Virginia and the United States Court of Appeals for the Fourth Circuit. The gist of Fleming's complaint is that the application

of the "Rooker-Feldman" doctrine[1], which holds that a United States District Court has no authority to collaterally review a final judgment of a state supreme court in a civil case, is unconstitutional when applied to a black litigant.

This matter comes before the Court on Defendants' motion to dismiss. The motion will be granted.

Background

In mid-1970's, Mr. Fleming, a Virginia developer, was involved in a real estate development dispute in his hometown of Charlottesville. As part of the ongoing conflict, Mr. Fleming placed an advertisement in the University of Virginia newspaper headlined "Racism." The ad stated that one

---

[1] The doctrine gains its name from the cases of Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983).

W. Bedford Moore III, a white University professor, opposed Fleming's plans to develop low-cost housing on racial grounds. Moore successfully sued on a libel theory in state court in 1977. The jury initially awarded Moore $10,000 in compensatory damages and $100,000 in punitive damages.

This verdict was reversed by the Supreme Court of Virginia because the trial judge had improperly instructed the jury. See Fleming v. moore, sub nom. Gazette, Inc. v. Harris, 275 S.E.2d 632 Va. 1981), cert. denied 469 U.S. 966 (1984). The suit was tried a second time in 1982 and Fleming lost again, this time to the tune of $100,000 in compensatory damages and $250,000 in punitive damages. The Supreme Court of Virginia heard argument on this second verdict and reversed in part and remanded, finding that the amount of the award bore no relationship to the loss

actually sustained by the plaintiff. Fleming v. Moore, sub nom. Gazette, Inc. v. Harris, 325 S.E. 2d 713 (1985), cert. denied, 472 U.S. 1032 (1985). On remand, the trial court entered a remittitur that reduced the award by one-third. Judgment was entered against the plaintiff for $233,333.34. Complaint Appendix J, pp. 181-185.

The Supreme Court of Virginia refused to consider Fleming's further appeals. Fleming followed the appropriate procedures in challenging the Virginia Supreme Court's refusal to hear his appeal by filing a petition for certiorari with the United States Supreme Court. The petition was denied. Fleming v. Moore, sub nom. Lewis v. Prot Packet Corp., 473 U.S. 905 (1985).

Mr. Fleming was unwilling to abide by the U.S. Supreme Court's refusal to hear his appeal. He proceeded to file a Section 1983

complaint in the Western District of Virginia against Moore for an injunction to stop enforcement of the judgment. The Federal District Court dismissed the complaint on the basis that Fleming's "sole remedy in the federal courts is by appeal to the United States Supreme Court." Fleming v. Moore, C/A No. 84-0042-C, slip op. at 1 (W.D. Va. March 29, 1985). Fleming appealed this dismissal to the 4th Circuit. The District Judge's dismissal was upheld by the Court of Appeals which explained that the "appropriate procedure" for attacking the judgement of Virginia's Supreme Court is a petition to the Supreme Court of the United States for certiorari. Fleming v. Moore, 780 F.2d 438, 440 (4th Cir. 1985). Fleming's attempt to obtain review of this decision in the U.S. Supreme Court was denied. Fleming v. Moore, 475 U.S. 1123 (1986).

In the meantime, Fleming had requested that the Virginia Supreme Court review the judgment against him based on intervening developments in Virginia state law. The Virginia Supreme Court declined to review the matter and Fleming again filed a petition for certiorari in the U.S. Supreme Court. The petition was denied, Fleming v. Moore, 479 U.S. 890 (1986), as was Fleming's petition for rehearing. Fleming v. Moore, 479 U.S. 1012 (1986).

Fleming then filed another suit in Federal Court, this time against Moore, his attorneys and the justices of the Virginia Supreme Court who had ruled against him on various appeals. The suit was brought under 42 U.S.C. §§ 1981, 1983, 1985(3), 1986 and 1988, alleging a deprivation of rights under the Thirteenth Amendment, the Equal Protection Clause of the Fourteenth

Amendment, and the First Amendment. Fleming claimed that the Virginia Supreme Court was punishing him as a black person for criticizing a white man. He asked the court to permanently enjoin enforcement of the libel judgment and to award him $1,000,000 in compensatory and punitive damages.

The District Court rejected all of Fleming's claims for lack of subject matter jurisdiction. This decision was appealed to the Fourth Circuit Court of Appeals. In a per curiam unpublished opinion, the Fourth Circuit affirmed, citing the Rooker-Feldman doctrine:

> Even if we were to assume arguendo, in our opinion, that the Virginia Supreme Court was in error in upholding the libel judgment against Fleming, we would be without jurisdiction to correct the mistake.

Neither the district court nor this Court could grant relief to Fleming on any of his claims without deciding that the Virginia Supreme Court wrongly decided the merits of Fleming's state appeal. In effect, Fleming asks us to sit in appellate review of a state's highest court. This we may not do.

In a line of cases stretching over the past 65 years, the Supreme Court has emphasized that federal district courts and federal courts of appeals have no authority to review a final judgment of a state court that has acted in its judicial capacity. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 415, 416 (1923). Only the United States Supreme Court has that power.

Feldman, 460 U.S. at 482; 28 U.S.C. §1257.

Fleming v. Moore, CA-87-6619 (Slip op. at 5) (4th Cir. 1989). Fleming petitioned the United States Supreme Court for certiorari, which was denied. Fleming v. Moore, 493 U.S. 816 (1989). Fleming asked for rehearing, which was denied. Fleming v. Moore, 493 U.S. 985 (1989).

Unable to obtain relief in the state courts of the jurisdiction in which he resides, or in the federal courts where he resides, or in the Supreme Court of the United States, Fleming now brings his grievance to the Federal court system in the District of Columbia. Fleming challenges the invocation of the Rooker-Feldman doctrine by the Federal District Court for the Western District of Virginia, and the Fourth Circuit Court of Appeals. Fleming claims the Rooker-

Feldman doctrine, as applied to him and a class of all similarly-situated black plaintiffs, violates his Thirteenth and Fourteenth Amendment protection because it prevents him from obtaining access to federal court. Fleming asserts that this Court is somehow vested with the authority to review the decision of the Fourth Circuit Court of Appeals and grant a monetary award, to be paid by the government of the United States.

Decision

No matter how the Plaintiff strives to describe his suit, this case is nothing more than another attempt by plaintiff and his lawyers to collaterally attack in federal court an adverse state libel judgment. The explanation for why such a collateral attack must fail does not require repeating. Until the Supreme Court of the United States says

otherwise, the Rooker-Feldman doctrine remains the law of the land. This Court does not have jurisdiction to review the decision of a state supreme court. Neither does this Court have jurisdiction to review a decision by the Fourth Circuit Court of Appeals. This case must be dismissed for lack of subject matter jurisdiction.

By filing a complaint in this Court against federal judges who have done nothing more than their duty by applying the law as the U.S. Supreme Court has declared it, Fleming has instituted a meritless action. There is no precedent for such a lawsuit. Rightfully so. The rule urged on this court by Mr. Fleming would make a mockery of the judicial system of this land. It would place the judicial system in a perpetual-motion cycle. No state court judgment would ever be considered final. Having lost in state

court, a litigant could immediately sue again in federal court. Then, after losing in federal court (as Mr. Fleming lost in the Western District of Virginia and the 4th Circuit), the litigant could sue in another district. This cannot be the law.

Defendant's motion will be granted and the complaint will be dismissed. An appropriate order accompanies this opinion.

Date: March 25, 1994

_____

Stanley Sporkin

United States District Court

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 87-6619

JAMES W. FLEMING,

Plaintiff-Appellant,

versus

W. BEDFORD MOORE; E. GERALD TREMBLAY; LLOYD T. SMITH; JOHN K. TAGGART. III; MELVIN E. GIBSON, JR.; THOMAS K. ALBRO; HARRY LEE CARRICO, Chief Justice of the Supreme Court of Virginia; GEORGE MOFFETT COCHRAN, Justice of the Supreme Court of Virginia; RICHARD HARDING POFF, Justice of the Supreme Court of Virginia; ROSCOE BOLAR STEPHENSON, JR., Justice of the Supreme Court of Virginia; ALEXANDER MARKS HARMAN, JR., Senior Justice of the Supreme Court of Virginia; THOMAS

CHRISTIAN GORDON, JR., Retired Justice of the Supreme Court of Virginia; WILLIAM CARRINGTON THOMPSON, Retired Justice of the Supreme Court of Virginia,

Defendants-Appellees

Appeal from the United States District Court for the Western District of Virginia, at Richmond. Robert R. Merhige, Jr., Senior District Judge. (CA-87-4-C).

Argued: October J, 1988

Decided: January 3, 1989

Before HALL, MURNAGHAN, AND CHAPMAN, Circuit Judges.

(Excerpts)

Even if we were to assume arguendo, in our opinion, that the Virginia Supreme Court was in error in upholding the libel judgment

against Fleming, we would be without jurisdiction to correct the mistake. Neither the district court nor this Court could grant relief to Fleming on any of his claims without deciding that the Virginia Supreme Court wrongly decided the merits of Fleming's state appeal. In effect, Fleming asks us to sit in appellate review of a state's highest court. This we may not do.

In a line of cases stretching over the past 65 years, the Supreme Court has emphasized that federal district courts and federal courts of appeal have no authority to review a final judgment of a state court that has acted in its judicial capacity. **(The U.S. Fourth Circuit citing, the Rooker-Feldman doctrine and 28 U.S.C. § 1257, Id.)**

Numerous circuits, including this one, have refused to allow §1983 plaintiffs to obtain judicial review of state court

Trial by jury is demanded.

W. BEDFORD MOORE, III

By counsel

defendant to the plaintiff and divers other persons in Albemarle County and the surrounding area.

5. These false, scandalous, malicious, defamatory and insulting words are, from their usual construction and common acceptance, insults and tend to violence and breach of the peace.

WHEREFORE, on account of said libel, the plaintiff has been greatly insulted, mortified, held up to ridicule, humiliated, aggrieved, and has sustained and is entitled to recover general and punitive damages, and plaintiff demands recovery from the defendant in the sum of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) for general damages, and the sum of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) for punitive damages, together with his attorneys' fees and the costs of this action.

relating to race or to the defendant personally.

4. On January 15 and 16, 1976, defendant wrongfully, willfully, maliciously and injuriously published a certain false, scandalous, malicious, insulting and defamatory libel of and concerning plaintiff, purporting to have been written by defendant, in a certain daily newspaper of general circulation known as "The Cavalier Daily", published and circulated in the County of Albemarle and the surrounding area, having a circulation of approximately 15,000 copies. This false, scandalous, defamatory, insulting and libelous matter was printed in the form of an advertisement entitled "RACISM" a copy of which is attached hereto as Exhibit "A" and prayed to be read as a part of this pleading. This libelous matter was communicated, conveyed, and made known by the

this regard been motivated by concerns

At no time have any of plaintiff's efforts in surrounding area, including "Black Mountain." Albemarle-Charlottesville Reservoir and the environmental impact of "Evergreen" on the County of Albemarle concerning the issues before governmental agencies of the constitutional rights as a citizen to raise part of 1974, plaintiff has exercised his

3. From time to time since the latter Fleming is a member of the black race. property owned by the plaintiff. James N. "Evergreen" which abuts the "Black Mountain" proposed residential subdivision known as developer engaged in the development of a James N. Fleming has been a real estate

2. At all times mentioned herein, Virginia.

race and is a professor at the University of Virginia. Plaintiff is a member of the white

V I R G I N I A :

IN THE CIRCUIT COURT OF ALBEMARLE COUNTY

W. BEDFORD MOORE, III,	)
	)
Plaintiff,	)
	)
v.	) At Law No. 976-L
	)
JAMES N. FLEMING,	) [Filed 3 Jan.
	)
Defendant.	) 1977]

[PX 2]

MOTION FOR JUDGMENT

To the Honorable David F. Berry, Judge of said Court:

Comes now the plaintiff, W. Bedford Moore, III, by counsel, and respectfully moves this Court for judgment against the defendant, James N. Fleming, and in support of his action states the following:

1. At all times mentioned herein, W. Bedford Moore, III, has been a private citizen residing at "Black Mountain" in a racially integrated area of Albemarle County,

people will benefit from it.

Signed: JAMES N. FLEMING

Advertisement

----------OPINION----------

I will develop Evergreen, and a lot of the pollution excuse is a sham. Only then would they admit that standard. opportunity to improve his or her living the world through the eyes of one seeking the people and put them in the position of seeing remove the guaranteed incomes of these greedy growth. The solution, of course, is to used as the current excuse to foster no- Pollution of the reservoir is being neighborhood. same people who oppose my proposed standard is being violently opposed by the day the opportunity to improve one's living by oppression of the working man, and yet to living standard in the world by no-growth or this Country did not achieve the highest who are living off of our work. I know that have-nots oppressed by the no-growth people opportunity. I cannot stand by and see the

I am a lover of liberty and freedom of -- too bad about you".

shown by their expression of "I've got mine economic community whose greed is repeatedly security for the tenured segment of the Obviously we have created too much financial between the haves and the have-nots.

There is a great conflict waging people within his sight.

little Monticello does not want any black house, but Bedford Moore, the occupant of his slaves' quarters down the hill from his sought for them. Mr. Jefferson even located the same opportunities that Mr. Jefferson a man who wants to deprive working people of overlooking my property which is occupied by a replica of Monticello upon the hill overlooking the developing community we have beloved Monticello upon the hill-top years after his vision of situating his

[PX-1]

The Cavalier Daily, University of Virginia,
Friday, January 16, 1976

RACISM

I have endeavored to realize the opportunity to provide housing and pleasant surroundings for working people--the sort of people who made this the great country that it is.

I do not expect any Farmington members to buy my houses. The tenured position-holders who live off the public dole at the expense of the working people are already well-housed, and could not be expected to live in a racially-integrated neighborhood, anyhow.

There is a great deal of irony in the fact that here in Mr. Jefferson's country 200

jurisdiction, p. 416. The reasoning of Rooker has been more recently affirmed in D.C. Court of Appeals v. Feldman, 460 U.S. 462 (1983), where the court stated that the District of Columbia District Court was without authority to review final determinations of the District of Columbia Court of Appeals in judicial proceedings and that review of such proceedings could be obtained only in the Supreme Court. The case cited Rooker for its authority, p. 476.

submitted a memorandum via

telephone, for Appellee.

O R D E R

H. E. Widener, Jr.

United States Circuit Judge (Excerpt)

Fleming now says that the judgment of the state court was in violation of the Thirteenth Amendment to the Constitution because it is claimed it gives effect to an 1840 Virginia statute, reenacted in 1860, making it a crime for a black man to use provoking language to a white man. It is claimed that this is a badge of slavery, which, of course, it is. (Emphasis added.) ... The case is indistinguishable from Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), in which the court described a similar attempt as being an exercise of appellate

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 87-6619

FILED:

JAN. 22, 1987

U.S. Court of

Appeals

Fourth Circuit

JAMES W. FLEMING,

Plaintiff-Appellant,

versus

W. BEDFORD MOORE, III,

Defendant-Appellee.

Appearances: S. W. Tucker, Esquire

B. Benjamin Dick, Esquire,

for Appellant.

Thomas E. Albro, Esquire,

judgments in lower federal courts. (The U.S. Fourth Circuit citing numerous circuits.)

The Thirteenth Amendment and equal protection arguments raised by Fleming present a harder question...[Such] an argument lacks merit...over those claims if they are "inextricably interwined" with the state court decision. (The U.S. Fourth Circuit citing Feldman, 460 U.S. at 482-84, note 16.)